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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,322	05/09/2001	Peter M. Dussinger	H1799-00071	5603
41396	7590	07/07/2005	EXAMINER	
DUANE MORRIS LLP P. O. BOX 1003 305 NORTH FRONT STREET, 5TH FLOOR HARRISBURG, PA 17108-1003			CIRIC, LJILJANA V	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/852,322

Applicant(s)

DUSSINGER ET AL.

Examiner

Ljiljana (Lil) V. Ciric

AVC

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

~~DETAILED ACTION~~ *LVC 6-27-05*

Allowable Subject Matter

1. Prosecution on the merits of this application is reopened on claims 8 through 22 considered unpatentable for the reasons indicated below: (a) claims 8 through 22 are rejectable under 35 U.S.C. 112, second paragraph as explained in greater detail below; (b) claims 8 and 13 are rejectable under 35 U.S.C. 102(b) as being anticipated by Tajbl et al. (DE 1 284 506, previously of record); and, (c) claims 8 and 9 are rejectable under 35 U.S.C. 102(b) as being anticipated by Diggelmann et al (U.S. Patent No. 4,793,405).

Thus, the previously indicated allowability of claims is hereby withdrawn. Rejections based on the newly cited reference(s) follow.

2. Applicant is advised that the Notice of Allowance mailed on December 1, 2003 is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

Drawings

1. The drawings are objected to because the line quality is generally poor. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining

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figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8 through 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to each of claims 13 and 19 as written, it is not clear to which elements the limitation "which are bonded together" [claim 13, line 3; claim 19, line 4] refers, thus rendering indefinite the metes and bounds of protection sought by the claims.

A word or words appear to be missing from the limitations "a wick positioned upon said confronting interior surfaces of said first and second plates the exterior surface of said at least one hollow column disposed within said vapor chamber" [claim 18, lines 3-5].

Claims 8 through 16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: any structural element(s) which are necessary for isolating the opening from the vapor chamber as recited in each of base claims 8, 14, 17, and 19 through 22.

Claim Rejections - 35 USC § 102

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. As best can be understood in view of the indefiniteness of the claims, claims 8 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Tajbl et al. (DE 1 284 506, previously of record).

Tajbl et al. [especially Figures 1 through 3] discloses a heat exchanger or heat pipe essentially as claimed, including two spaced apart plates, the first or lower plate in Figures 2 and 3 and the second or upper plate in Figures 2 and 3 defining a vapor chamber 2, at least one depression formed in the first plate which projects into the vapor chamber 2 and is bonded to the second plate, and an opening defined through the depression and the second plate where the opening is isolated from the vapor chamber. The bolt as shown in Figure 2 projects through the aforementioned opening. A translation of DE 1 284 506 is provided herewith.

The reference thus reads on the claims.

7. As best can be understood in view of the indefiniteness of the claims, claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Diggelmann et al. (U.S. Patent No. 4,793,405).

Diggelmann et al. [especially Figure 5] discloses a heat exchanger or heat pipe essentially as claimed, including two spaced apart plates 120 and 141, the first plate 141 and the second plate 120 defining a vapor chamber 136, at least one depression formed in the first plate 141 which projects into the vapor chamber 136 and is bonded to the second plate 120, and an opening defined through the depression and the second plate 120 where the opening is isolated from the vapor chamber 136. The bolt 142 as shown in Figure 5 projects through the aforementioned opening. Sheets 134 and 137 are readable on the at least one spacer as recited in claim 9 of the instant application.

The reference thus reads on the claims.

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Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claim 14 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 7 of U.S. Patent No. 6,302,192. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application claim is anticipated by the patent claim and anticipation is the epitome of obviousness. The requirement for election of species in the parent application (now U.S. Patent No. 6,302,192) does not appear to preclude a double patenting rejection. The application discloses that both embodiments as shown in Figures 1 and 2 are useable with a heat sink. Therefore, the presence or absence of a heat sink does not define the species. The claimed limitations of the heat pipe in patent claim 7 are identical to those in application claim 14. Therefore, applicants are claiming the same species in these two claims. Also, patent claim 7 and application claim 14 would not be restrictable as combination/subcombination because of the identical recitation of the subcombination of the heat pipe as recited in both claims.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric whose telephone number is 571-272-4909. The examiner can normally be reached on Mondays through Fridays from 10:00 a.m. to 6:30 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene, can be reached at 571-272-4930.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ljiljana (Lil) V. Ciric
Primary Examiner
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